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Michael J. Hillyard v. City Court of Logan City : Brief of Appellant upon Rehearing

Utah Supreme Court

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IN THE SUPREME COURT

OF THE

STATE OF UTAH

MICHAEL J. HILLYARD, Plaintiff and Respondent, -vs- CITY COURT OF LOGAN CITY, COUNTY OF CACHE, STATE OF UTAH, Defendant and Appellant.	Case No. 15964 15298

APPELLANT'S BRIEF UPON REHEARING

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APPEAL FROM ORDER GRANTING WRIT OF PROHIBITION OF FIRST JUDICIAL DISTRICT COURT FOR CACHE COUNTY HONORABLE VeNOY CHRISTOFFERSEN, JUDGE

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* * * *

STATEMENT OF KIND OF CASE

This is a civil action brought by the Plaintiff seeking a Writ of Prohibition. The District Court of Cache County, State of Utah granted the Writ of Prohibition and the Supreme Court of the State of Utah on the 18th day of April, 1978, upheld the Judgment of the District Court.

STATEMENT OF FACTS

The Statement of Facts found in the Appellant's Brief is incorporated into this Brief on Rehearing with one addition. Mr. Low's statement found in the transcript, page 3, line 21 where he indicated that the defendant was arrested near Hyde Park, Utah.

ARGUMENT

POINT I.

THE COURT'S DECISION IN THE ABOVE ENTITLED CASE WILL HAVE AN ADVERSE IMPACT UPON THE NEWLY ENACTED CIRCUIT COURT ACT OF 1977.

The legislature of the State of Utah in 1977 enacted legislation that constitutes a major revision of the court system in the State of Utah. Circuit Courts replacing the present City Courts will have expanded jurisdiction and the Justices' Courts will have essentially the same jurisdiction except that complaints alleging reckless driving and drunk driving must be commenced in the Circuit Court. The decision of this Court will have an impact upon the Circuit Court system because Section 41-6-166 U.C.A., as amended in 1975, was not repealed by the legislature and therefore, when a person is arrested for drunk driving they are required by Section 41-6-166 to be taken before the nearest most accessible magistrate for the purpose of setting bond (77-10-5 U.C.A., as newly enacted, defines magistrates to include Justices of the Peace and the Circuit Court Judges.) This Court's decision will then confer upon the magistrate jurisdiction over a case contrary to the provisions of the Circuit Court Act. Section 78-4-5 U.C.A., as amended in 1977, which in part reads as follows:

> "All complaints for offenses charged under Title 41, except for offenses charged under Article 5 of Chapter 6 of Title 41, must be filed in the Court of the Municipal Justice of the Peace or precinct of the county Justice of the Peace where the offense occurred where such justice courts exist and have jurisdiction of such offense."

Amended Section 78-5-4 of the Circuit Court Act, which becomes effective on July 1, 1978, grants to the Circuit Court jurisdiction over all Class A and Class B misdemeanors committed in the respective counties in which such Courts are established. Drunk driving and reckless driving are Class B misdemeanors.

Therefore, the new Circuit Courts will have jurisdiction over all misdemeanors and the Justices' Courts will have jurisdiction over all Class B and C misdemeanors. However, the Circuit Court Act provides that all traffic complaints except drunk driving and reckless driving must be filed in the Court of Municipal Justice of the Peace in the precinct where the offense occurred where such Courts exist and have jurisdiction.

What the statute doesn't say is where to file the drunk driving and reckless driving complaints, however, it is inferred that it will be with the Circuit Courts.

The foregoing section is not couched in terms of a legislative grant of jurisdiction but as a directive to the filing officer.

The decision in this case will have the effect of forcing the filing of the Complaint in a Justice's Court contrary to the legislative intent and depriving the Defendants of the benefits of the Circuit Court Act.

I respectively suggest to the Court that an interpretation of Section 41-6-166 U.C.A., 1953, as amended in 1975, in this case to the effect that the appearance before the

magistrate is for the purpose of setting bond only will have the following benefits to the accused, the judiciary, and the members of the Bar:

a. The arrested person will be advised of the charges against him and have the opportunity of having bond set in order to aid in his defense and secure the services of an attorney. He will be tried by a law trained Judge in the Circuit Court.

b. The Justices of the Peace will still fix the bond for the Circuit Court where the matter will be tried and the legislative intention relating to the enactment of the Circuit Court system will be preserved.

c. The members of the Bar will be able to advise their clients as to the nature of the proceedings brought against their client and the Court where the matter will be tried. The problems relating to venue will be eliminated. The prosecuting attorneys at the inception of the Circuit Court Act will know proper procedures for filing of Complaints. Further judicial interpretation of the Circuit Court Act will be eliminated.

In 1975 the first special session of the legislature added words "for the purpose of setting bond" to Section 41-6-166 U.C.A. This legislation followed the decision by this Court in the case of Wells vs. City Court of Logan City, County of Cache, State of Utah, 535 P.2d 683. The addition of the words by the legislature was to clarify

the purpose of the statute after the Wells decision. The Circuit Court Act also reflects the legislature's intent as shown by the amendment.

It is conceded that the provisions of 41-6-166 differ from other provisions found in the criminal code such as Section 77-13-17 U.C.A. which is covered in the following points of this Brief.

POINT II.

THIS COURT SHOULD RECONSIDER ITS OPINION AS TO THE RELATIONSHIP BETWEEN SECTION 41-6-166 and 77-13-17 U.C.A.

This Court in its decision cited Section 77-13-17 U.C.A., as amended in 1971, in holding that the appearance before a magistrate to set bond confers jurisdiction for the trial of the matter. Title 77 of the U.C.A. relates to the general code of criminal procedure and is governing with respect to the general law of criminal procedure. Section 41-6-166 relates to specific traffic offenses and is therefore specific in its application. The Section states: "Whenever any person is arrested for any violation of this act....." The language gives the statute a special relationship with the Motor Vehicle Code and not to the general criminal code. See Bateman vs. Board of Examiners, Ut., 322 P.2d 381, in which this Court announced the rule that the more specific statute takes precedence over a general statute. The case of Pacific Intermountain Express Co. vs. State Tax Commission,

316 P.2d 549, in which this Court stated as follows:

> "In case of conflict, a later enactment is controlling over an earlier one; and that express provisions of statutes take preference over general ones."

New Mexico has decided a case closely in point. See State vs. Sawyers, 445 P.2d 978, where the defendant was convicted of an offense under the Motor Vehicle Code of that State and sentenced under the provisions of the Motor Vehicle Code. The defendant objected stating that the provisions of the general criminal law with regards to sentencing applied to him. The New Mexico Supreme Court said as follows:

> "If the general statute, standing alone, would include the same matter as the special statute and thus conflict with the special statute, the special statute controls since it is considered an exception to the general statute."

That rule as it applies to this case would be that the special statute (Section 41-6-166 U.C.A.) would control the type of appearance before the magistrate (to fix bond only) and the general statute (Section 77-13-17 U.C.A.) would not apply to this type of traffic situation. The requirements of Section 77-13-17 U.C.A. that the Complaint be filed in the same Court as the appearance to fix bond would be a general statute and subject to the exception of a special statute.

In the case of People vs. Talbot, California, 414 P.2d 633, the California Supreme Court held that it is a generally accepted rule that in adopting legislation

the legislature is presumed to have knowledge of existing domestic judicial decisions and to have enacted and amended statutes in the light of such decisions. This case is pertinent as there is a direct relationship between the Wells decision decided in 1975, and the amendment of Section 41-6-166 U.C.A. in 1975. Section 41-6-166 U.C.A. was amended after the Wells decision and as a result of that decision and therefore the legislature intended that the appearance before the magistrate be for the sole purpose of setting bond.

POINT III.

THE COURT'S DECISION IN THIS CASE FAILS TO CONSIDER THE IMPACT OF THE DECISION ON THE DEFENDANT'S RIGHT TO BE TRIED BEFORE A LAW TRAINED JUDGE.

It can be stated without citation that a defendant accused of a crime where there is potential imprisonment involved in the sentencing for the crime has the option of having his case tried before a law trained Judge. It is conceded that this is an option that rests only with the defendant and not the State of Utah. This rule of law was recently codified by the legislature in the enactment of Section 78-5-4 U.C.A. of the new Circuit Court Act where it states as follows:

> "Notwithstanding any provisions of this code relating to jurisdiction and venue of justice courts, in any matter in which the judge has the option of imposing a jail sentence, the defendant may demand and shall be accorded the right to have the case tried before a judge who is a member of the Utah State Bar."

The allegation charging a person with the offense of drunk driving is an offense that carries with it an option held by the Court of imposing a jail sentence. The present decision of this Court in this case would impose upon the State a burden of filing the case before the magistrate where the initial appearance was had for the purpose of setting bond. The magistrate would in all probability, not be a law trained Judge. Therefore, the decision would encourage the filing of the complaint contrary to the Circuit Court Act and the trial of this type of case before a person who did not have legal training which is contrary to the desired effect of the United State Supreme Court decision and the Circuit Court Act. The result would be the expense and time consuming act of the defendant making his demand (if he so elected) and the Court's time and effort going toward a non-productive aspect of the justice system. Here also would be an additional time spent by the defendant's attorney and resulting in increased costs to the defendant. I recognize that this argument is related to public policy and convenience and not to the legal issues but is brought out to the Court's attention at a time when various members of our government are critical of the fees that are being charged by our bar members.

POINT IV.

THE COURT IN ITS DECISION FAILED TO TAKE INTO CONSIDERATION THE PROVISIONS OF SECTION 41-6-167.U.C.A.

Allied with Section 41-6-166 U.C.A., which provides for the appearance in traffic cases before a magistrate for the purpose of setting bond, is Section 41-6-167 U.C.A which governs the procedure at the time the person is taken before the magistrate. Here again is the special statute for the purpose of dealing with certain traffic matters and supersedes the provisions of Section 77-13-77 U.C.A. which is a general statute. Section 41-6-167 does not state that the action must be filed before the same magistrate as the appearance is before, but states that the defendant must be informed as to the place and time to appear, thus indicating that the Complaint may be filed before any other magistrate having jurisdiction.

CONCLUSION

As I approach the Court with this Brief, I do so with some trepidation. I realize that in filing this Brief I am asking gentlemen of far greater experience than I to reconsider their former opinion. I am asking learned men to change their minds in a case well considered and well reasoned by them. I further realize that the advent of the Circuit Court Act is yet in the future and cannot affect the ultimate rights of this defendant. The real issue is the administration of our laws so that the defendant and the State can make the administration of justice expedient yet fair to all. This Brief is filed as a request to the Court for guidelines in which all parties may achieve the ends of justice. As a

prosecutor, I would like to advise those officers within our jurisdiction of the proper procedures for fair treatment of those arrested. I hope to avoid the costly appeal process to those persons who become involved with this type of action under the Circuit Court System. As a prosecutor, I can and will live with the Hillyard decision as it now stands. I can advise the officers in our county of this decision and its implications. That is not the point. The point is that I believe there is a good legal basis for interpreting the law of this case as set forth in this Brief and that such interpretation would be for the benefit of the defendant, his counsel, the Courts of this jurisdiction and the counsel for the State of Utah. I do not purport to claim that the majority of this Court has made an error in their decision, but only to point out a different approach to the problem of equal merit and seek your additional counsel upon the implementation of the Circuit Court Act.

RESPECTFULLY SUMMITTED this 22 day of May, 1978.

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MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Brief to Mr. Arthur Christean at the Court Administrator's Office, 250 E. Broadway, SLC, UT 84101 and to Mr. David S. Young at 220 So. 200 E. #450, SLC, UT 84111, this 23 day of May, 1978.

George W. Preston

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